IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE PATENT APPLICATION OF:	Michael Kende
SERIAL NO.:	09/997,273
ATTORNEY DOCKET NO:	92654-008
FILING DATE:	Nov. 30, 2001
ART UNIT :	3694
EXAMINER	KIRSTEN SACHWITZ APPLE
FOR:	SYSTEM AND METHOD FOR AUTOMATIC ANALYSIS OF RATE INFORMATION

APPELLANT'S BRIEF ON APPEAL UNDER 37 C.F.R. § 41.37

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA. 22313-1450

Dear Sir:

Further to the *"Notice of Panel Decision from Pre-Appeal Brief Review"* mailed

February 28, 2008, which reset the due date for the Appeal Brief to **June 28, 2008** with a

three month extension of time, Appellant respectfully submits Appellant's Brief on Appeal

pursuant to 37 C.F.R. § 41.37.

A check in the amount of $780.00 is enclosed, in payment of the $255.00 small entity

Appeal Brief fee and $525.00 extension of time fee. The Director is authorized to charge any

additional fees that may be due, or credit any overpayment of same, to Deposit Account No.

033975 (**Ref. No. GATTO 92654-008**).

REQUIREMENTS OF 37 C.F.R. § 41.37

I. <u>REAL PARTY IN INTEREST</u> - *37 C.F.R. § 41.37(c)(1)(i)*

The real parties in interest are the inventors: Michael Kende, Robert MacDonald and

James Gatto.

II. <u>RELATED APPEALS AND INTERFERENCES</u> - *37 C.F.R. § 41.37(c)(1)(ii)*

Appellant is aware of no related appeals or interferences.

III. <u>STATUS OF CLAIMS</u> - *37 C.F.R. § 41.37(c)(1)(iii)*

<u>Pending</u>:   Claims 1-26 are pending.

<u>Cancelled</u>:   No claims are cancelled.

<u>Allowed</u>:   No claims have been allowed.

<u>Rejected</u>:   Claims 1-26 stand rejected.

<u>On Appeal</u>:   Claims 1-26 are appealed.

IV. <u>STATUS OF AMENDMENTS</u> - *37 C.F.R. § 41.37(c)(1)(iv)*

No amendments have been filed subsequent to the mailing of the Final Office Action

on April 16, 2007 (hereinafter "Final Action").

V.   SUMMARY OF CLAIMED SUBJECT MATTER - *37 C.F.R. § 41.37(c)(1)(v)*

The following exemplary citations to the Specification and drawing figures *as-filed* are not exclusive, as other examples of support for the claimed subject matter exist. As such, the following citations should not be viewed as limiting.

Before providing the showing required by the rules, Applicants provide a brief overview of the invention.

Users of various services do not always use the service provider or rate plan that is best suited for that individual. The reasons for this vary, but include the lack of time, interest or ability to keep up with the overwhelming amount of information about rate plans and changes to rate plans and the lack of time, interest or ability to compare prior usage to existing plans to determine an advantageous plan, and continuously updating the analysis as plans and needs change. Another factor is not knowing all of the variables that can affect the rates or how changing usage patterns can impact savings. For these and other reasons, many users do not select the best plan for them based on their personal usage patterns or preferences or change when a better plan becomes available. As a result, many users overpay for these and other services.

Rate analysis engines per se are known to help individuals and other entities to chose from among different service providers and/or different rate plans (e.g., for monthly recurring services). However, existing systems suffer from various drawbacks. By way of

example, some rate analysis engines take into account only some of the factors that may be important to a consumer's decision. Also, a user typically has to manually enter all of the information requested by the rate analysis engine. Sometimes people guess because it is difficult to determine accurate information.

An aspect of the invention relates to a multi-factor rate analysis system and method for analyzing, on a per user basis, service plan rates, service providers, and other information. Rate information may be based on one or more of historical and other user specific usage information and user preferences, current rate information for one or more services as well as other information. This information may be used to identify one or more rate plans that are advantageous to a user, enable the user to select from the identified plans, facilitate the ability of the user to switch from one rate plan to another and provide other benefits and advantages.

According to an embodiment of the invention, a system may include various modules and databases for analyzing rate information to generate one or more beneficial rate plans, other savings suggestions and/or other information to one or more users. For example, a central rate analysis tool of the present invention may include one or more of a prior usage module, a billing rate module, a profile module, an external data module, a savings module, a savings calculation module, a deliver module, a text-to-speech module, an outbound calling module, a schedule module, a proactive savings module, a switching module, a demand aggregation module, an analysis engine module, an affinity module and other modules and databases.

According to another embodiment, various data and other information may serve as inputs to various modules. For example, electronic prior usage data may be as an input for a prior usage module. A savings database may serve as an input for a savings module. A billing rate database may serve as an input for a billing rate module. External data may serve as an input to an external data module. Affinity data from various sources may serve as an input to affinity module. Other information and/or sources may also serve as inputs to these and other modules and databases.

Services may include recurring or other services such as long distance telephone, wireless telephone, electric power, natural gas, water, sewer, internet access, cable television, satellite television, and other services.

A prior usage module may be used for receiving and storing usage information associated with individual users and other entities. A profile module may enable users to create user profiles, preferences, and other personal information. A billing rate module may contain rate plan information from one or more service providers, and other entities for one or more services. An external data module may contain user independent data and other data that may be relevant to a rate or usage analysis. An analysis engine module of the present invention may analyze one or more of individual usage patterns; user profile; user preference information; rate information, external data and other information, to determine one or more preferred rate plans and other savings options for a particular user.

The system of the present invention may further include a savings module, a savings calculation module and a proactive savings module. A savings module may provide savings

information to a user based on user related information, such as information obtained through the profile module and other personalized information. For example, the savings information may be in the form of static text where the savings information is relevant and applicable to the user. A savings calculation module may be used to provide the user with an amount of savings based on the user making the recommended one or more changes. Savings amount may be in the form of percentage and/or dollar amount, for example. Graphical illustrations of savings history may also be provided. A proactive savings module may provide active savings suggestions to a user that entails some participation by the user. Generally, proactive savings module may provide savings suggestions that include behavior modification, which may include changing usage habits, installation of certain equipment and other actions.

The system of the present invention may further include a delivery module that enables information resulting from an analysis to be forwarded to a user or other identified destination, such as a service provider or other location for consideration and/or use. A text-to-speech module may be used to forward or relay information to a user by voice as specified by the user. Also, an outbound call module may be used to delivery information to the user via phone (cell phone or other mechanism).

The system may further include a switching module that may enable automatic or facilitated switching from one rate plan to another (whether it is from one provider to another or within the same provider). Switching from one rate plan (and/or service provider) to another may be partially or fully automatic at the user's preference.

The system may further include a demand aggregation module that may draw upon

various factors such as one or more of stated user preferences (including thresholds of

savings beyond which a user would switch providers); actual or projected usage patterns;

and other factors to generate price proposals at various levels of demand and deliver such

proposals to providers, which proposals, if accepted, would be made available to users.

The independent claims include claims 1 and 14. The showing required by 37 CFR §

41.37 (c)(1)(v) is now provided.

Claim 1

Claim 1 relates to a computer implemented multi-factor rate analysis system (e.g.,

Page 8, l. 20+; Fig. 1, #10) for analyzing service provider rate plan information (e.g., Page 8, l.

20+; Fig. 1, #10), the system comprising. It includes a user module for accessing user

information including a user's prior usage information and the user's preferences (e.g., Page

11,. l. 3+; Page 12, l. 19-25; Page 19, l. 15 – Page 23, l. 17; Fig. 1, # 100/110). It further

includes a service provider database for storing service provider information wherein service

provider information comprises rate plan information associated with one or more service

providers (e.g., Page 11,. l. 5+; Page 12, l. 1-8; Page 23, l. 18- Page 25, l. 10; Fig. 1, #

160/165). It also includes a multi-factor rate analysis engine module for analyzing on a per

user basis user information and service provider information to generate one or more

savings suggestions based on the rate plan information, the user's prior usage information

and at least one user preference (e.g., Page 11, l. 21+; Page 26, l. 4- Page 28, l. 18; Fig.1, #

240).

Claim 14

Claim 14 relates to a computer implemented method for analyzing service provider

rate plan formation. It includes accessing user information including a user's prior usage

information and the user's preferences (e.g., Fig. 3, 3.0; Page 41, l. 12+). It further includes storing service provider information wherein service provider information comprises rate plan information associated with one or more service providers (e.g., Fig. 1, 160, 165; Page 5, l. 15 #). It also includes analyzing, on a per user basis, user information and service provider information to generate one or more preferred savings suggestions based on the rate plan information, the user's prior usage information and at least one of the user's preferences (e.g., Fig. 1, 240; Fig. 3, 340; Page 8, l. 20 – Page 9, l. 2).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL - *37 C.F.R. § 41.37(c)(1)(vi)*

Claims 1-26 stand rejected under 35 U.S.C. § 102 as allegedly being anticipated by U.S. Patent No. 6,885,997 to Roberts ("Roberts"). The rejection of each of the claims is appealed.

VII. ARGUMENTS - *37 C.F.R. § 41.37(c)(1)(vii)*

For at least the foregoing reasons, the rejection of claims 1-26 U.S.C. § 102 is legally improper and should be reversed.

First, the rejection is legally deficient in that it does not even allege that each limitation of the claims is disclosed by the prior art – the Examiner selectively parses the claim elements and only addresses portions of them. This renders the Section 102 rejection legally deficient.

Second, a number of the limitations that the Examiner alleges are disclosed in Roberts, in fact, are not so disclosed. This too renders the Section 102 rejection legally deficient.

A. The rejection does not even allege that each limitation of the claims is disclosed by the prior art.

It is well established that in a proper 35 U.S.C. §102 rejection the burden is on the Examiner to demonstrate the each of the claim limitations is disclosed by the reference relied on. Here , the Examiner does not even allege that all of the limitations are disclosed in Roberts, the sole reference relied on. Rather, apparently recognizing that Roberts does not disclose all of the claim limitations, the Examiner resorts to selectively parsing the claim limitations and only alleges that some of them are disclosed in Roberts. For convenience, limitations in the pending claims that are not even alleged to be disclosed in Roberts are in bold and italicized.

Comparison of Pending Claims v. Examiner's Rejections

Claims of 09/997,273	Examiner's Rejection
1. A computer implemented *multi-factor* rate analysis system for analyzing service provider rate plan information, the system comprising:	Re claims 1 & 14 Roberts discloses *A method & system for analyzing service provider rote plon informotion, comprising:*
a user module for accessing user information *including a user's prior usage information and the user's preferences*;	*a user madule far accessing user infarmatian (see Figure 5, item 402)*
a service provider database for storing service provider information wherein service provider information comprises rate plan information associated with one or more service providers; and	*o service pravider data base far staring service pravider infarmatian wherein service pravider infarmatian camprises rate plan infarmatian assaciated with one ar mare service praviders; and (see Figure 5, item 410)*
a *multi-factor* rate analysis engine module for analyzing *on a per user basis* user information and service provider information to generate one or more savings suggestions based on the rate *plan* information, *the user's prior usage information and at least one user preference.*	*on onolysis engine module for analyzing user infarmatian and service pravider infarmatian ta generate ane ar more savings suggestians based an rate infarmotion and at least ane ather user preference (see Figure 5, item 416)*
2. The system of claim 1 wherein the user information further includes *a threshold amount of savings that would cause the user to switch rate plans*.	Re claims 2 & 15 Roberts discloses: *User infarmatian camprises user entered prafile infarmatian (see Figure 5, item 402)*
3. The system of claim 1 wherein the user's prior usage information includes information regarding *a user's usage patterns for a service over two or more periods of time*.	Re claims 3 & 16 Roberts discloses: *User infarmatian camprises user priar usage infarmotion (see Figure 5, item 402)*

Claims of 09/997,273	Examiner's Rejection
4. The system of claim 1 wherein prior usage information comprises *prior usage information that is electronically extracted from an electronic bill payment system to avoid the need for a user to manually enter at least some prior usage information*.	Re claims 4 & 17 Roberts discloses: *User information comprises user entered profile information and prior usage information (see Figure 5, item 402)*
5. The system of claim 1 further comprising a savings module for providing personalized savings information to a user wherein the personalized savings information is generated by the analysis engine module *based on the user's prior usage data and at least one of the user's preferences*.	Re claims 5 & 18 Roberts discloses: *A savings module/step for providing personalized savings information wherein personalized savings information is generated by the analysis engine module (see Figure 7, item 64)*
6. The system of claim 5 wherein *savings information comprises incentives or discounts available to the user based on equipment owned by the user*.	Re claims 6 & 19 Roberts discloses: *Savings information comprises static savings information (see Figure 7, item 64)*
7. The system of claim 5 wherein savings information comprises proactive savings information *including user behavior change recommendation information*.	Re claims 7 & 20 Roberts discloses: *Savings information comprises proactive savings information (see Figure 7, item 64)*
8. The system of claim 1 further comprising an external data module for storing user independent data wherein the analysis 5 [sic] engine module further analyses user independent data in generating one or more savings suggestions.	Re claims 8 & 21 Roberts discloses: *External data module/step further analyses user independent data in generating one or more preferred savings suggestions (see Figure 6, item 506)*

Claims of 09/997,273	Examiner's Rejection
9. The system of claim 1, *the user information further including rate plan switching criteria* and further comprising a switching module for *automatically* switching the user to a new rate plan *when the rate plan switching criteria is met*.	Re claims 9 & 22 Roberts discloses: *A switching module/step for focilitoting switching the user to the one or more preferred sovings suggestions wherein the one or more preferred sovings suggestions comprises o new rote plon (see Figure 8, item 602)*
10. The system of claim 1 further comprising a switching module for *facilitating the ability for the user to switch* to a new rate plan.	Re claims 10 & 23 Roberts discloses: *Switching module/step for focilitoting switching the user to the one or more preferred savings suggestions wherein the one or more preferred savings suggestions comprises a new service provider (see Figure 7, item 64)*
11. The system of claim 1 further comprising a demand aggregation module for aggregating one or more users who are willing to transfer to an identified service provider.	Re claims 11 & 24 Roberts discloses: *A demand aggregation module/step for oggregoting one or more users who ore willing to transfer to an identified service provider (see Figure 8, item 604, it is inherent thot if you ore tracking multiple orders you would aggregote them if some service provider identified)*
12. The system of claim 1 further comprising a demand aggregation module for aggregating one or more users who are willing to transfer to an identified rate plan.	Re claims 12 & 25 Roberts discloses: *A demand aggregation module/step for oggregoting one or more users who ore willing to transfer to an identified rate plan (see Figure 8, item 604, it is inherent thot if you ore trocking multiple orders you would oggregate them if same rote plon identified)*
13. The system of claim 1 further comprising *means for automatically monitoring rate plans for a subscriber user* and a delivery module for *delivering alerts to a subscriber user when a better rate is available to the subscriber user*.	Re claims 13 & 26 Roberts discloses: *A delivery module (see Figure 8, item 606)*

Claims of 09/997,273	Examiner's Rejection
14. A computer implemented method for analyzing service provider rate plan formation, the method comprising the steps of:	Re claims 1 & 14 Roberts discloses *A methad & system far analyzing service pravider rate plan infarmatian, camprising:*
accessing user information *including a user's prior usage information and the user's preferences*;	*a user madule far accessing user infarmatian (see Figure 5, item 402)*
storing service provider information wherein service provider information comprises rate plan information associated with one or more service providers; and	*a service pravider data base far staring service provider information wherein service pravider infarmatian camprises rate plan information assaciated with ane ar mare service praviders; and (see Figure 5, item 410)*
analyzing, *on a per user basis*, user information and service provider information to generate one or more preferred savings suggestions based on the rate plan information, *the user's prior usage information* and at least one of the user's preferences.	*an analysis engine madule for analyzing user infarmatian and service pravider infarmatian ta generate ane ar mare savings suggestions base on rate information and at least ane ather user preference (see Figure 5, item 416)*
15. The method of claim 14 wherein user information further *includes a threshold amount of savings that would cause the user to switch rate plans*.	Re claims 2 & 15 Roberts discloses: *User infarmatian comprises user entered prafile infarmatian (see Figure 5, item 402)*
16. The method of claim 14 wherein the user's prior usage information includes information regarding a user's *usage patterns for a service over two or more periods of time*.	Re claims 3 & 16 Roberts discloses: *User information comprises user prior usage infarmatian (see Figure 5, item 402)*
17. The method of claim 14 wherein the prior usage information comprises prior usage information *that is electronically extracted from an electronic bill payment system to avoid the need for a user to manually enter at least some prior usage information*.	Re claims 4 & 17 Roberts discloses: *User information comprises user entered prafile infarmatian and priar usage infarmatian (see Figure 5, item 402)*

Claims of 09/997,273	Examiner's Rejection
18. The method of claim 14 further comprising the step of providing personalized savings information to a user wherein the personalized savings information is generated *based on the user's prior usage information and at least one of the user's preferences*.	Re claims 5 & 18 Roberts discloses: *A sovings module/step for providing personolized sovings informotion wherein personolized sovings information is generoted by the onolysis engine module (see Figure 7, item 64)*
19. The method of claim 18 wherein *savings information comprises incentives or discounts available to the user based on equipment owned by the user*.	Re claims 6 & 19 Roberts discloses: *Savings information comprises static sovings informotion (see Figure 7, item 64)*
20. The method of claim 18 wherein savings information comprises proactive savings information *including user behavior change recommendation information*.	Re claims 7 & 20 Roberts discloses: *Sovings information comprises prooctive sovings informotion (see Figure 7, item 64)*
21. The method of claim 14 further comprising the step of storing user independent data and wherein analyzing user information and service provider information comprises the step of analyzing the user independent data to generate one or more savings suggestions.	Re claims 8 & 21 Roberts discloses: *Externol doto module/step further onolyses user independent doto in generoting one or more preferred sovings suggestions (see Figure 6, item 506)*
22. The method of claim 14 wherein the *user information further includes rate plan switching criteria*, and further comprising the step of *automatically* switching the user to a new rate plan *when the rate plan switching criteria is met*.	Re claims 9 & 22 Roberts discloses: *A switching module/step for focilitoting switching the user to the one or more preferred sovings suggestions wherein the one or more preferred sovings suggestions comprises o new rote plon (see Figure 8, item 602)*
23. The method of claim 14 further comprising the step of *facilitating the ability for the user to switch* to a new rate plan.	Re claims 10 & 23 Roberts discloses: *Switching module/step for facilitating switching the user to the one or more preferred savings suggestions wherein the one or more preferred sovings suggestions comprises o new service*

Claims of 09/997,273	Examiner's Rejection
	provider (see Figure 7, item 64)
24. The method of claim 14 further comprising the step of aggregating one or more users who are willing to transfer to an identified service provider.	Re claims 11 & 24 Roberts discloses: *A demond aggregation module/step for oggregoting one or more users who ore willing to tronsfer to on identified service provider (see Figure 8, item 604, it is inherent that if you are trocking multiple orders you would oggregate them if some service provider identified)*
25. The method of claim 14 further comprising the step of aggregating one or more users who are willing to transfer to an identified rate plan.	Re claims 12 & 25 Roberts discloses: *A demond oggregotion module/step for oggregating one or more users who are willing to transfer to an identified rate plon (see Figure 8, item 604, it is inherent thot if you ore trocking multiple orders you would aggregote them if some rote plon identified)*
26. The method of claim 14 further comprising the step of **enabling the user to specify one or more modes of delivery**.	Re claims 13 & 26 Roberts discloses: *A delivery module (see Figure 8, item 606)*

The foregoing demonstrates that many of the claim limitations are not even addressed in the final rejection. This alone constitutes clear, legal error.

B. A number of the limitations that the Examiner alleges are disclosed in Roberts in fact are not so disclosed.

<u>Claims 1 and 14</u>

The examiner erroneously alleges that Roberts discloses "a *multi-factor* rate analyses engine module for analyzing on a *per user basis*...based on the rate plan information, the user's prior usage information and *at least one user preference*" by referring to Fig.5, element 416. This element simply says "perform analysis." This does not disclose a multi-

factor rate analysis as claimed, much less one that discloses an analysis (on a per user basis)

based on the user's prior usage information and at least one *user preference*. The

corresponding text appears to simply describe item 416 at Col. 8, l. 27-29 , as running an

analysis. The Examiner has not demonstrated that Roberts discloses a multi-factor rate

analysis (per user) system (or method) much less one that performs an analysis based on

both prior usage data and user preference(s). As such the 102 rejection is legally improper

and must be reversed.

Claims 2 and 15

Claim 2 recites that the system includes user information and that "the user

information further includes a threshold amount of savings that would cause the user to

switch rate plans." Claim 15 has similar recitations. Roberts does not disclose this and the

final rejection states that the "user information comprises user entered profile

information." Even if this is true is, it is insufficient as it does not disclose a threshold that is

included as part of the user information. The threshold amount that is stored can be used

by the system to enable the system to automatically switch the user to another plan if that

threshold can be attained and/or to alert the user that a plan meeting the threshold savings

is available if the user wants to switch manually. (See for example, Claims 9/22 and 13/26).

Roberts does not disclose this. The final rejection references item 402 in Fig.5, but this

simply states "enter client information."

Claims 3 and 16

Claim 3 recites that "the user's prior usage information includes information regarding a user's usage patterns for a service over two or more periods of time." Claim 16 has similar recitations. The final rejection does not even allege that Roberts discloses looking at patterns as claimed. The rejection references item 402 in Fig. 5. This simply states "enter client information." Even if a pattern *could be* discerned from stored information, the reference does not disclose doing so.

Claims 4 and 17

Claim 4 recites that the "prior usage information comprises prior usage information that is electronically extracted from an electronic bill payment system to avoid the need for a user to manually enter at least some prior usage information." Claim 17 has similar recitations. The final rejection does not even allege that Roberts discloses that prior usage information that is electronically extracted from *an electronic bill payment system* to avoid the need for a user to manually enter at least some prior usage information. The use of this feature is particularly advantageous for consumers to avoid the need to enter information every month and/or avoid guessing at usage information. This enables a synergistic combination of electronic bill payment systems and rate analysis engines.

Claims 5 and 18

Claim 5 recites "a savings module for providing personalized savings information to a user wherein the personalized savings information is generated by the analysis engine module based on the user's prior usage data and at least one of the user's preferences."

Claim 18 has similar recitations. The rejection does not even allege that Roberts discloses using user's preferences.

Claims 6 and 19

Claim 6 depend from claim 5 and further recites that the "savings information comprises incentives or discounts available to the user based on equipment owned by the user." Claim 19 has similar recitations. The rejection does not even allege that that Roberts discloses this. The rejection refers to Fig. 7, item 64. But this does not to appear to relate to savings based on equipment owned by the user. This feature enables adding a factor to the rate analysis that does not appear to be disclosed by Roberts. (See, e.g., Spec. Page 20, l. 16-22).

Claims 7 and 20

Claim 7 depends from claim 5 and further recites that the "savings information comprises proactive savings information including user behavior change recommendation information." Claim 20 has similar recitations. The rejection alleges that Roberts discloses "proactive savings information," but does not even allege that this includes user behavior change recommendation information. It is not clear from Roberts how the information is proactive savings information, but in any event even if it is, it does not address all of the claim recitations. This feature is advantageous, for example, in that the system can provide savings information to the user that is not just based on usage, but rather how the user can change behavior to save more. (See, e.g., Spec., Page 29, l. 3-9).

Claims 8 and 21

Claim 8 recites an "external data module for storing user independent data wherein the analysis 5 [sic] engine module further analyses user independent data in generating one or more savings suggestions." Claim 21 has similar recitations. The final rejection alleges that Fig. 6, item 506 discloses this. However, that item is a functional block that states "generate comparison data using reduced client data." This does not disclose an external data module... Rather it is a comparison of "usage data." See Col. 8, l. 45-51.

Claims 9 and 22

Claim 9 recites that "the user information further including rate plan switching criteria and further comprising a switching module for automatically switching the user to a new rate plan when the rate plan switching criteria is met." Claim 22 has similar recitations. The final rejection does not even disclose that Roberts discloses a "switching module for automatically switching the user to a new rate plan when the rate plan switching criteria is met." Rather, the rejection relies on Fig. 8, item 602 in Roberts. This item is referred to in the description of Roberts as a step that the user can perform. Specifically, Roberts states:

> Referring now to FIG. 8, a flowchart showing additional capabilities, once report 60 is created, client 16 may choose to switch 602 service providers 17 to obtain the savings outlined in report 60. When this happens, agent 15 may make arrangements with the new service provider 17 and have client 16 fill out the necessary paperwork, or client 16 may fill out the paperwork alone. The data required may be entered via terminal 20 such as by a form, and some of the data may be automatically retrieved from database 100.

This does not describe an automated switching process.

Claim 10

Claim 10 recites a "switching module for facilitating the ability for the user to switch to a new rate plan." As shown above Roberts does not disclose a switching module.

Claims 11 and 24

Claim 11 recites "a demand aggregation module for aggregating one or more users who are willing to transfer to an identified service provider." Roberts does not disclose any such module and the rejection is wholly deficient in this point. The rejection alleges that this limitation is met by item 604 of Fig.8. This item is "track order." This refers to the ability to track an order to switch plans. It says nothing about aggregating demand. Specifically, Roberts states:

> The order generated may be tracked 604 within the system, including tracking the actual service that was ordered by one or more service identifiers such as part number or other description, the date of the order and reference number of the order. In a telephony embodiment, the reference number may comprise a billing telephone number. Clients 16 and their orders may thus be associated with an agent 15, allowing that agent 15 to obtain credit from a service provider 17 for the order. The order status may be tracked and monitored 606 until completion of the order.

Claims 12 and 25

Claim 12 recites "a demand aggregation module for aggregating one or more users who are willing to transfer to an identified rate plan. Claim 25 has similar recitations. The rejection alleges that this limitation is met by item 604 of Fig.8. This item is "track order" as detailed above. It does not address aggregation of users willing to switch.

Claims 13 and 26

Claim 13 recites "means for automatically monitoring rate plans for a subscriber user and a delivery module for delivering alerts to a subscriber user when a better rate is available to the subscriber user." Claim 26 recites "the step of enabling the user to specify one or more modes of delivery." The rejection alleges that Roberts discloses these limitations by Fig. 8, item 606. However, item 606 is a step entitled "Monitor order status." This is described in the specification of Roberts as being a step in the process of monitoring the status of a request by a user who already has decided to switch plans. It is not monitoring to determine if a better plan is available or the delivery mode by which such information should be communicated. Specifically, Roberts states:

> The order generated may be tracked 604 within the system, including tracking the actual service that was ordered by one or more service identifiers such as part number or other description, the date of the order and reference number of the order. In a telephony embodiment, the reference number may comprise a billing telephone number. Clients 16 and their orders may thus be associated with an agent 15, allowing that agent 15 to obtain credit from a service provider 17 for the order. The order status may be tracked and monitored 606 until completion of the order.

For at least these reasons the rejections of each of the claims under Section 102 over

Roberts is legally deficient and must be overturned.

VIII. CLAIMS APPENDIX - *37 C.F.R. § 41.37(c)(1)(viii)*

The pending claims (claims 1-26) are attached in APPENDIX A.

IX. EVIDENCE APPENDIX - *37 C.F.R. § 41.37(c)(1)(ix)*

APPENDIX B: None.

X. RELATED PROCEEDINGS INDEX - *37 C.F.R. § 41.37(c)(1)(x)*

APPENDIX C: None.

CONCLUSION

For at least the foregoing reasons, Appellant requests that the rejection of claims 1-26 under 35 U.S.C. § 102, be reversed.

Date: **JUNE 30, 2008**

Respectfully submitted,

By: _____

James G. Gatto
Registration No. 32694

<u>**APPENDIX A: CLAIMS APPENDIX**</u>

1. (Previously Presented) A computer implemented multi-factor rate analysis system for analyzing service provider rate plan information, the system comprising:

a user module for accessing user information including a user's prior usage information and the user's preferences;

a service provider database for storing service provider information wherein service provider information comprises rate plan information associated with one or more service providers; and

a multi-factor rate analysis engine module for analyzing on a per user basis user information and service provider information to generate one or more savings suggestions based on the rate plan information, the user's prior usage information and at least one user preference.

2. (Previously Presented) The system of claim 1 wherein the user information further includes a threshold amount of savings that would cause the user to switch rate plans.

3. (Previously Presented) The system of claim 1 wherein the user's prior usage information includes information regarding a user's usage patterns for a service over two or more periods of time.

4. (Previously Presented) The system of claim 1 wherein prior usage information comprises prior usage information that is electronically extracted from an electronic bill payment system to avoid the need for a user to manually enter at least some prior usage information.

5. (Previously Presented) The system of claim 1 further comprising a savings module for providing personalized savings information to a user wherein the personalized savings

information is generated by the analysis engine module based on the user's prior usage data and at least one of the user's preferences.

6. (Previously Presented) The system of claim 5 wherein savings information comprises incentives or discounts available to the user based on equipment owned by the user.

7. (Previously Presented) The system of claim 5 wherein savings information comprises proactive savings information including user behavior change recommendation information.

8. (Previously Presented) The system of claim 1 further comprising an external data module for storing user independent data wherein the analysis 5 engine module further analyses user independent data in generating one or more savings suggestions.

9. (Previously Presented) The system of claim 1, the user information further including rate plan switching criteria and further comprising a switching module for automatically switching the user to a new rate plan when the rate plan switching criteria is met.

10. (Previously Presented) The system of claim 1 further comprising a switching module for facilitating the ability for the user to switch to a new rate plan.

11. (Original) The system of claim 1 further comprising a demand aggregation module for aggregating one or more users who are willing to transfer to an identified service provider.

12. (Original) The system of claim 1 further comprising a demand aggregation module for aggregating one or more users who are willing to transfer to an identified rate plan.

13. (Previously Presented) The system of claim 1 further comprising means for automatically monitoring rate plans for a subscriber user and a delivery module for delivering alerts to a

subscriber user when a better rate is available to the subscriber user.

14. (Previously Presented) A computer implemented method for analyzing service provider rate plan formation, the method comprising the steps of:

accessing user information including a user's prior usage information and the user's preferences;

storing service provider information wherein service provider information comprises rate plan information associated with one or more service providers; and

analyzing, on a per user basis, user information and service provider information to generate one or more preferred savings suggestions based on the rate plan information, the user's prior usage information and at least one of the user's preferences.

15. (Previously Presented) The method of claim 14 wherein user information further includes a threshold amount of savings that would cause the user to switch rate plans.

16. (Previously Presented) The method of claim 14 wherein the user's prior usage information includes information regarding a user's usage patterns for a service over two or more periods of time.

17. (Previously Presented) The method of claim 14 wherein the prior usage information comprises prior usage information that is electronically extracted from an electronic bill payment system to avoid the need for a user to manually enter at least some prior usage information.

18. (Previously Presented) The method of claim 14 further comprising the step of providing personalized savings information to a user wherein the personalized savings information is generated based on the user's prior usage information and at least one of the user's preferences.

19. (Previously Presented) The method of claim 18 wherein savings information comprises incentives or discounts available to the user based on equipment owned by the user.

20. (Previously Presented) The method of claim 18 wherein savings information comprises proactive savings information including user behavior change recommendation information.

21. (Previously Presented) The method of claim 14 further comprising the step of storing user independent data and wherein analyzing user information and service provider information comprises the step of analyzing the user independent data to generate one or more savings suggestions.

22. (Previously Presented) The method of claim 14 wherein the user information further includes rate plan switching criteria, and further comprising the step of automatically switching the user to a new rate plan when the rate plan switching criteria is met.

23. (Previously Presented) The method of claim 14 further comprising the step of facilitating the ability for the user to switch to a new rate plan.

24. (Original) The method of claim 14 further comprising the step of aggregating one or more users who are willing to transfer to an identified service provider.

25. (Original) The method of claim 14 further comprising the step of aggregating one or more users who are willing to transfer to an identified rate plan.

26. (Original) The method of claim 14 further comprising the step of enabling the user to specify one or more modes of delivery.

APPENDIX B

EVIDENCE APPENDIX - *37 C.F.R. § 41.37(c)(1)(ix)*

NONE.

APPENDIX C

RELATED PROCEEDINGS INDEX - *37 C.F.R. § 41.37(c)(1)(x)*

NONE.